

## § 240.10b-17

such change may be given within a reasonable time after the effective date of the change.

(15 U.S.C. 78j)

[34 FR 19718, Dec. 16, 1969]

### § 240.10b-17 **Untimely announcements of record dates.**

(a) It shall constitute a “manipulative or deceptive device or contrivance” as used in section 10(b) of the Act for any issuer of a class of securities publicly traded by the use of any means or instrumentality of interstate commerce or of the mails or of any facility of any national securities exchange to fail to give notice in accordance with paragraph (b) of this section of the following actions relating to such class of securities:

(1) A dividend or other distribution in cash or in kind, except an ordinary interest payment on a debt security, but including a dividend or distribution of any security of the same or another issuer;

(2) A stock split or reverse split; or

(3) A rights or other subscription offering.

(b) Notice shall be deemed to have been given in accordance with this section only if:

(1) Given to the National Association of Securities Dealers, Inc., no later than 10 days prior to the record date involved or, in case of a rights subscription or other offering if such 10 days advance notice is not practical, on or before the record date and in no event later than the effective date of the registration statement to which the offering relates, and such notice includes:

(i) Title of the security to which the declaration relates;

(ii) Date of declaration;

(iii) Date of record for determining holders entitled to receive the dividend or other distribution or to participate in the stock or reverse split;

(iv) Date of payment or distribution or, in the case of a stock or reverse split or rights or other subscription offering, the date of delivery;

(v) For a dividend or other distribution including a stock or reverse split or rights or other subscription offering:

(a) In cash, the amount of cash to be paid or distributed per share, except if

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exact per share cash distributions cannot be given because of existing conversion rights which may be exercised during the notice period and which may affect the per share cash distribution, then a reasonable approximation of the per share distribution may be provided so long as the actual per share distribution is subsequently provided on the record date,

(b) In the same security, the amount of the security outstanding immediately prior to and immediately following the dividend or distribution and the rate of the dividend or distribution,

(c) In any other security of the same issuer, the amount to be paid or distributed and the rate of the dividend or distribution,

(d) In any security of another issuer, the name of the issuer and title of that security, the amount to be paid or distributed, and the rate of the dividend or distribution and if that security is a right or a warrant, the subscription price,

(e) In any other property (including securities not covered under paragraphs (b)(1)(v) (b) through (d) of this section) the identity of the property and its value and basis for assigning that value;

(vi) Method of settlement of fractional interests;

(vii) Details of any condition which must be satisfied or Government approval which must be secured to enable payment of distribution; and in

(viii) The case of stock or reverse split in addition to the aforementioned information;

(a) The name and address of the transfer or exchange agent; or

(2) The Commission, upon written request or upon its own motion, exempts the issuer from compliance with paragraph (b)(1) of this section either unconditionally or on specified terms or conditions, as not constituting a manipulative or deceptive device or contrivance comprehended within the purpose of this section; or

(3) Given in accordance with procedures of the national securities exchange or exchanges upon which a security of such issuer is registered pursuant to section 12 of the Act which contain requirements substantially

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comparable to those set forth in paragraph (b)(1) of this section.

(c) The provisions of this rule shall not apply, however, to redeemable securities issued by open-end investment companies and unit investment trusts registered with the Commission under the Investment Company Act of 1940.

(Secs. 10(b), 23(a), 48 Stat. 891, as amended, 49 Stat. 1379, 15 U.S.C. 78j)

[36 FR 11514, June 15, 1971, as amended at 37 FR 4330, Mar. 2, 1972]

### § 240.10b-18 Purchases of certain equity securities by the issuer and others.

(a) *Definitions.* Unless the context otherwise requires, all terms used in this section shall have the same meaning as in the Act. In addition, unless the context otherwise requires, the following definitions shall apply:

(1) The term *affiliate* means any person that directly or indirectly controls, is controlled by, or is under common control with, the issuer;

(2) The term *affiliated purchaser* means:

(i) A person acting in concert with the issuer for the purpose of acquiring the issuer's securities; or

(ii) An affiliate who, directly or indirectly, controls the issuer's purchases of such securities, whose purchases are controlled by the issuer or whose purchases are under common control with those of the issuer;

*Provided, however,* That the term "affiliated purchaser" shall not include a broker, dealer, or other person solely by reason of his making Rule 10b-18 bids or effecting Rule 10b-18 purchases on behalf of the issuer and for its account and shall not include an officer or director of the issuer solely by reason of his participation in the decision to authorize Rule 10b-18 bids or Rule 10b-18 purchases by or on behalf of the issuer;

(3) The term *Rule 10b-18 purchase* means a purchase of common stock of an issuer by or for the issuer or any affiliated purchaser of the issuer, but does not include any purchase of such stock

(i) Effected during the restricted period specified in §242.102 of this chapter, during a distribution (as defined in §242.100 of this chapter) of such com-

mon stock or a distribution for which such common stock is a reference security, by the issuer or any of its affiliated purchasers;

(ii) Effected by or for an issuer plan by an agent independent of the issuer;

(iii) If it is a fractional interest in a security, evidenced by a script certificate, order form, or similar document;

(iv) Pursuant to a merger, acquisition, or similar transaction involving a recapitalization;

(v) Which is subject to Rule 13e-1 under the Act [§240.13e-1];

(vi) Pursuant to a tender offer that is subject to Rule 13e-4 under the Act [§240.13e-4] or specifically excepted therefrom;

(vii) Pursuant to a tender offer that is subject to section 14(d) of the Act and the rules and regulations thereunder.

(4) The term *Rule 10b-18 bid* means (i)

A bid for securities that, if accepted, or  
(ii) A limit order to purchase securities that, if executed, would result in a Rule 10b-18 purchase;

(5) The term *plan* has the meaning contained in §242.100 of this chapter;

(6) The term *agent independent of the issuer* has the meaning contained in §242.100 of this chapter;

(i) The agent is not an affiliate of the issuer; and

(ii) Neither the issuer nor any affiliate of the issuer exercises any direct or indirect control or influence over the times when, or the prices at which, the independent agent may purchase the issuer's common stock for the issuer plan, the amounts of the security to be purchased, the manner in which the security is to be purchased, or the selection of a broker or dealer (other than the independent agent itself) through which purchases may be executed;

*Provided, however,* That the issuer or its affiliate will not be deemed to have such control or influence solely because it revises not more than once in any three-month period the basis for determining the amount of its contributions to the issuer plan or the basis for determining the frequency of its allocations to the issuer plan, or any formula specified in the plan that determines the amount of shares to be purchased by the agent;